



Ultra-Vired: How Budget Rules and Practices Can Reduce Budget Credibility

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INTRODUCTION

Once enacted, national budgets often veer off course due to myriad factors, including reasonable and urgent changes in priorities or social or economic crises. Nevertheless, changes to the budget during implementation should follow established rules and involve a broad conversation with citizens and legislators, just as we would expect for the initial approval of the budget. A transparent rule-based system of dialogue tells actors what they can do, and how and when they need to seek approval and explain their actions to others.

Across the world, budget systems differ. One aspect of this variation concerns the degree to which executives are constrained from making changes to the budget during implementation. These rules can be more or less restrictive, and the degree to which executives follow formal rules may vary as well. We hypothesize that rules and practices that enhance executive discretion, with limited oversight by legislatures or the public, are associated with lower budget credibility.

In this report, we review a few rules and practices in select countries that tend to enhance executive discretion over budget implementation. Our exploration complements a forthcoming IBP quantitative analysis (Cho and de Renzio 2020) that found that the quality of public financial management (PFM), including controls during budget execution, contributed to higher credibility of the budget in aggregate and compositional terms. For example, if the executive can easily change the approved budget with little oversight, this creates greater opportunities for budget deviations. We would expect that tighter rules and practices can make it harder to change the budget, either by directly reducing opportunities to deviate, or more indirectly by raising the costs of deviating from the budget (such as damage to the executive's political reputation), and would therefore improve budget credibility.

We discuss three broad types of practices in this paper. The first relates to deliberate skewing of revenue forecasts, creating a need to either expand or reduce the budget during implementation. This practice is attractive in cases where executives have discretion over how budgets can be modified in the presence of surplus revenue, or a revenue deficit. In particular, if the executive has more discretion over revenues during budget implementation than budget formulation, then manipulating revenue forecasts is an appealing option for executives.

The other practices we review are related to the procedures used to adjust budgets during the year. Virement is the degree of flexibility to shift funds between programs that is legally allowed in a budget, in anticipation of at least some need for flexibility in implementing any program or project. Supplementary budgets are normally used to make more substantial changes to the budget in response to unanticipated changes in social or economic conditions, or major challenges in program implementation. Both virement and supplementary budget rules and practices affect the ease with which executives can adjust budgets during the year, and therefore plausibly affect credibility.

We primarily draw on secondary literature, as well as some original research carried out by IBP and its partners. Our aim is not to be comprehensive, but to contribute to the understanding of how deviations from the budget can arise, and why they may be more extensive in some countries than others. We are motivated by observed practices in countries where IBP or its partners have carried out budget analysis and advocacy work, and we therefore review rules and practices in six countries: Argentina, Brazil, Kenya, Mexico, Uganda, Philippines and Serbia. The analysis is illustrative, designed to shed light on how these rules and practices work and why they might exacerbate low credibility.

While we argue that these rules and practices can influence the severity of credibility challenges across countries, we also note that formal rules are often not followed in practice. Thus, improving credibility is not a simple matter of tightening rules, but also requires active engagement in budget implementation by legislators and citizens, drawing on publicly available budget data and through more open dialogue about the budget, to enforce better practices. Thus, while we recommend that countries consider tightening the rules determining how revenue surpluses/deficits are handled, and those governing virement and supplementary budgets, we do not believe that such changes are a panacea. Our most vigorous recommendation is that governments enhance transparency and dialogue around budget deviations to ensure that when they happen, they are highly publicized, essential and in line with the public interest.

BUDGET SHIFTS IN RESPONSE TO REVENUE SHORTAGE OR SURPLUS

Research shows that many governments deviate significantly from their revenue estimates.¹ These deviations may have various causes, such as poor technical capacity, unexpected macroeconomic changes, or unanticipated changes in policy. In certain cases, governments may deliberately under- or overestimate revenues, particularly if the executive has flexibility over how the budget is adjusted in response to deviations from revenue forecasts.² For

¹ See Marco Cangiano and Rahul Pathak, "Revenue Forecasting in Low-Income and Developing Countries: Biases and Potential Remedies," *The Palgrave Handbook of Government Budget Forecasting*, October 15, 2019, https://link.springer.com/chapter/10.1007/978-3-030-18195-6_5; D. Addison, "The Quality of Budget Execution and Its Correlates. Policy Research Working Paper No. 6657," World Bank, 2013; T. Buettner and B Kauder, "Revenue Forecasting Practices: Differences across countries and consequences for forecasting performance," *Fiscal Studies*, 2010, 313-340; Stephan Danninger ; Annette J Kyobe ; M. Cangiano, "The Political Economy of Revenue-Forecasting Experience From Low-Income Countries," International Monetary Fund, <https://www.imf.org/en/Publications/WP/Issues/2016/12/31/The-Political-Economy-of-Revenue-Forecasting-Experience-From-Low-Income-Countries-17918>.

² Governments might also overestimate revenue to put pressure on revenue agencies to collect more, or they might underestimate revenues to create opportunities for corruption. For further discussion see Danninger, et al 2005.

example, if executives have wide discretion over the distribution of any revenue surplus, this may incentivize them to intentionally under-estimate revenues.

Empirically, we know that many countries lack oversight of surplus revenue. For example, the 2017 Open Budget Survey (OBS) shows that there is limited oversight of revenue surpluses in a large number of countries: in 44 percent of the 115 countries surveyed, the executive spends excess revenue without receiving approval from the legislature.³ Below, we consider specific cases of revenue under-estimation generating revenue surpluses in Argentina and Mexico.

In Argentina, surplus revenues are allocated by Administrative Decisions (DAs) and Necessary and Urgent Decrees (DNU). DAs are decrees that allow the Chief of the Cabinet of Ministers to fulfill its responsibilities specified by the Constitution, such as to execute the budget. DNUs are executive decrees reserved for exceptional circumstances where it is impossible to follow regular legislative procedures in matters excluding criminal, tax, electoral, and political party regulations.⁴ In practice, DAs and DNUs are both utilized to modify the budget, among other uses.

An important distinction between DAs and DNUs is that the latter require legislative approval. However, the legislature rarely denies DNUs, in part because it is difficult to do so. Once the executive presents a DNU to the Bicameral Permanent Legislative Commission, it has 10 days to review it and present it to both legislative chambers, along with its opinion. As of 1994, a DNU cannot be modified by the legislature, and can only be rejected if both chambers concur. Further, if Congress does not reach a decision, then a DNU is approved by default. Of 800 DNUs issued between 1983 and 2018, 84% of them were approved by default. Further, only 2% were rejected.⁵

Generally, DNUs and DAs that modify the budget specify the amount of the change and the source or destination of funds. For example, DNU N° 1053/18 of November 2018 stipulated an increase in projected revenues of \$256 million pesos and an increase in expenditure of \$419 million pesos. The growth in revenues was reportedly caused by increases in income taxes, Value Added Tax, and foreign trade, among others sources. Meanwhile, the

³ This includes situations in which there is or is not a law in place that requires the executive to seek approval from the legislature. See IBP, "Open Budget Survey Explorer," 2017, <http://survey.internationalbudget.org/#>.

⁴ Ministerio de Justicia y Derechos Humanos, "Decretos: Facultades del Presidente," <http://www.derechofacil.gob.ar/leysimple/decretos/>.

⁵ Unidad de Estudios y Proyectos Especiales, "Informe sobre Decretos de Necesidad y Urgencia," Cámara Argentina de Comercio y Servicios, November 2018, [https://www.cac.com.ar/data/documentos/30_Informe%20sobre%20Decretos%20de%20Necesidad%20y%20Urgencia_FINAL%20\(1\).pdf](https://www.cac.com.ar/data/documentos/30_Informe%20sobre%20Decretos%20de%20Necesidad%20y%20Urgencia_FINAL%20(1).pdf).

expenditure increase went to debt service, non-financial public enterprises, and social security, among other areas.⁶ Importantly, these decrees do not specify why these changes were not anticipated in the approved budget.

Legally, the legislature is the only entity that may adjust the budget in aggregate terms. Per the Financial Administration Law, “Decisions that affect the total amount of the budget and the total amount of estimated debt are reserved for the National Congress.”⁷ However, DNUs and DAs permit the executive to increase total expenditure using surplus revenues with little oversight or resistance from the legislature. Research and historical data suggest the executive frequently leverages this flexibility, in the sense that it deliberately under-estimates revenues because it can later spend the surplus with few restrictions.⁸

Total revenues have been consistently under-estimated in Argentina relative to the approved budget. Over the past decade, actual revenues exceeded the approved estimate by seven percent, on average. There is significant variation in the percent deviation; in 2016 and 2018, the deviation reached 13 percent. Further, actual revenues tend to be lower than revised estimates. This is significant because the government finances in-year increases in expenditure through extra revenues (as well as borrowing), so if actual revenues are inferior to the revised projection, then deficits can be higher than expected.

In principle, the legislature could check the accuracy of the executive’s revenue estimates through the Congressional Budget Office (OPC). However, the OPC’s published reports lack this type of analysis. Instead, they tend to be limited to a description of the budget proposal and underlying macroeconomic estimates.

⁶ Asociación Argentina de Presupuesto y Administración Financiera Pública, “Informe sobre modificaciones presupuestarias N° 12/2018,” November 16, 2018, <https://docs.asap.org.ar/public/doc/Modificaciones%20presupuestarias%2012/18>.

⁷ Ministerio de Justicia y Derechos Humanos, “Administración Financiera y de los Sistemas de Control del Sector Público Nacional,” <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/554/texact.htm>.

⁸ Gisell Cogliandro, “Claves para entender el Presupuesto de la Administración Nacional,” Konrad Adenauer Stiftung, March 17, 2014, <https://bit.ly/2KxPn4P>

TABLE 1: APPROVED, MODIFIED, AND COLLECTED TOTAL REVENUES IN ARGENTINA, 2009-2018

Year	Approved (million pesos)	Modified (million pesos)	Collected (million pesos)	Percent deviation between:	
				Modified & Approved	Collected & Approved
2009	242,949	269,494	240,485	11%	-1%
2010	273,751	328,839	327,154	20%	20%
2011	374,549	419,923	407,335	12%	9%
2012	506,576	528,329	512,761	4%	1%
2013	629,217	669,461	665,877	6%	6%
2014	860,412	966,398	944,178	12%	10%
2015	1,202,007	1,252,151	1,212,308	4%	1%
2016	1,471,718	1,631,840	1,659,383	11%	13%
2017	1,882,819	1,974,471	1,947,405	5%	3%
2018	2,199,926	2,508,398	2,485,244	14%	13%

Note: “approved” refers to the approved revenue estimate stated in the enacted budget, “modified” refers to the revised estimate, and “collected” refers to actual revenue collection at the end of the year.

Source: Oficina Nacional de Presupuesto, Argentina

Budget data at the level of *jurisdicciones* (i.e. administrative classification including government ministries, departments, and agencies, plus debt) provides insight on how the budget was modified. Per Table 2, there are significant variations across *jurisdicciones* and over time, although there are few cases in which a *jurisdiccion* budget is cut overall. There are certain areas that consistently receive large budget increases, such as the Ministry of External Relations and Religion, Ministry of Transportation, and Obligations under the Treasury. Debt service is also a significant beneficiary, which might suggest either poor forecasting of debt service or a desire to mask the level of resources being used to pay off debts.⁹

⁹ Obligations under the Treasury provides financial assistance to different areas of the public and private sectors and is used to address emergent commitments with provincial, national, and international organization. See Minsiterio de Hacienda, “Jurisdiccion 91: Obligaciones a Cargo del Tesoro,” 2017, <https://www.minhacienda.gob.ar/onp/documentos/presutexto/proy2017/jurent/pdf/P17J91.pdf>.

TABLE 2: PERCENT DEVIATIONS BETWEEN MODIFIED AND APPROVED BUDGET IN ARGENTINA, BY JURISDICTION

	2016	2017	2018	Average
Public debt service	210%	36%	37%	94%
Ministry of Modernization	166%	10%	4%	60%
Ministry of Energy and Mining	118%	-12%	51%	52%
Obligations under the Treasury	34%	15%	79%	43%
Min. of Exterior Relations and Religion	24%	30%	48%	34%
Public Ministry	38%	39%	14%	30%
Judicial Branch of the Nation	42%	28%	13%	28%
Ministry of Transportation	26%	16%	29%	24%
Min. of Environment and Sustainable Development	26%	12%	30%	22%
Min. of Science, Technology and Innov. Prod.	26%	26%	2%	18%
Ministry of Security	25%	13%	9%	16%
Ministry of Agroindustry	14%	24%	8%	15%
Ministry of Labor, Employment and Social Security	26%	8%	8%	14%
Presidency of the Nation	11%	10%	19%	13%
Legislative Branch of the Nation	14%	16%	8%	13%
Ministry of Social Development	19%	5%	12%	12%
Ministry of Health	24%	18%	-6%	12%
Ministry of Defense	14%	14%	7%	12%
Ministry of Culture	15%	20%	0%	12%
Min. of Justice and DDHH	15%	6%	6%	9%
Ministry of Education	16%	4%	6%	9%
Ministry of Tourism	12%	15%	-1%	8%
Ministry of the Interior, Public Works and Livelihood	-3%	8%	16%	7%
Chief of the Cabinet of Ministers	-37%	32%	19%	4%
Ministry of Production	-11%	-4%	26%	4%
Ministry of Treasury	-4%	-6%	12%	1%
Ministry of Finance	0%	N/A	-2%	-1%
Total expenditure	41%	11%	17%	23%

Note: Table is sorted by highest average deviation. Cells shaded in red reflect increases that exceed 15 percent of the approved budget. The Ministry of Communications was dissolved in July 2017 and absorbed by the Ministry of Modernization. As a result, this table subsumes the Ministry of Communications within the Ministry of Modernization. Further, in Dec 2016, the Ministry of Treasury and Public Finances was divided into two separate ministries (Ministry of Treasury and Ministry of Finances and Ministry of Treasury), until June 2018, when the Ministry of Finance was absorbed by the Ministry of Treasury.

Source: Asociación Argentina de Presupuesto y Administración Financiera Publica

In Mexico, the executive enjoys a similar degree of flexibility over the distribution of revenue surpluses. The Federal Law on the Budget and Financial Responsibility (LFPRH) divides extra revenues into three distinct categories: those with a destination specified by law, those that are derived by public entities (i.e. state-owned corporations and decentralized organizations), and the remaining amount that does not have a specific destination or come from public entities, such as general tax revenues.¹⁰ The third category offers the most discretion to the executive and is a major source of excess revenue. The LFPRH states that revenues in this category should predominantly be used to finance “non-programmable spending,” such as transfers to municipalities, debt repayment, arrears, and natural disasters. This language provides substantial discretion to the executive on how to spend these funds.¹¹ Altogether, this system creates a major incentive for the executive to deliberately underestimate revenues. As Mariana Campos, coordinator at research institute, México Evalúa opined in a recent news piece, “As the law is written, there is an incentive to receive extra revenues.... [because] it allows a degree of discretion over how to distribute them in the year.”¹²

This rationale is supported by fiscal trends. In the last five years, surplus revenues exceeded estimates by 10 percent cumulatively, while spending was 7 percent over budget. With the partial exception of 2017, increases in expenditure closely track increases in revenue collection, as shown in Figure 1.¹³ Further, it is worth noting that tax revenues, which falls under the third category previously mentioned, was equivalent to 47 percent of total net revenue surplus during this period.¹⁴

¹⁰ An example of the surplus revenues that have a destination specified by law is Remainders from Operations of the Bank of Mexico (ROBM), which refers to earnings obtained by reserves held in USD when the exchange rate changes relative to the Mexican peso. Article 19B of the LFPRH specifies that surplus ROBM is to be used to pay public debt and to finance the Budget Revenue Stabilization Fund or improve the financial position of the federal government.

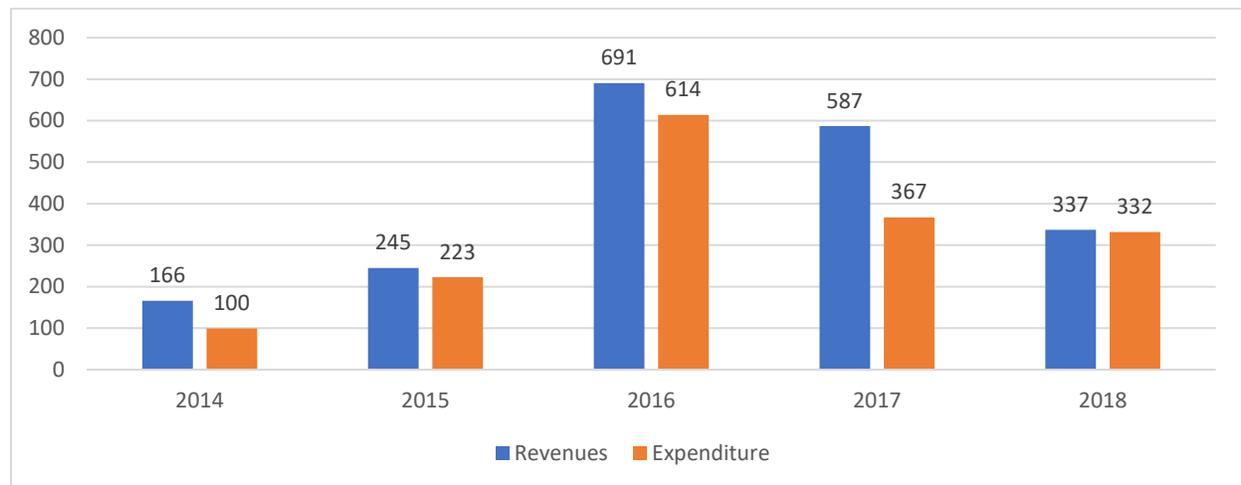
¹¹ Mexico Evalúa, “Arquitectura del Ramo 23,” February 2018, https://www.mexicoevalua.org/cajanegra/wp-content/uploads/2017/03/2018_02_27_Caja_Negra2.0_Documento.pdf; Fundar, “Budgetary Adjustments: The Case of Mexico and the Administration of Former President Enrique Peña Nieto,” April 2019, <https://drive.google.com/file/d/1saOxckqVisYaittbH6UVwAC2uGig7tXI/view>.

¹² Belén Saldívar, “Vital, regular adecuadamente ingresos excedentes,” *El Economista*, November 25 2018, <https://www.eleconomista.com.mx/economia/Vital-regular-adecuadamente-ingresos-excedentes-20181125-0052.html>.

¹³ Although only the last five years are discussed, budget data shows that the aggregate budget has followed a pattern of over-spending since at least 2001. See Mexico Evalúa.

¹⁴ Information on how surplus revenues are distributed can be found in the Public Accounts database as well as the annual fourth quarter report annex. The data indicates that excess revenues often exceed increases in expenditure, but it is not clear to the authors how the remaining revenues are utilized.

FIGURE 1: INCREASE IN EXPENDITURE AND REVENUE COLLECTION RELATIVE TO APPROVED BUDGET, BILLIONS OF MXN, 2014-2018



Source: Public Accounts

Official reports do not comprehensively detail the precise destination of all surplus revenues. However, disaggregated data on how expenditures are modified during the year give a partial sense of how excess revenues are utilized.

While we have been examining cases where governments have an incentive to underestimate revenue, there are also circumstances where executives may have incentives to over-estimate revenues deliberately. Often, this is a response to difficult political decisions about what to fund with limited resources. The 2017 OBS reports that in 61 percent of countries surveyed the executive does not seek approval from the legislature to cut the budget when revenues fall below forecast.¹⁵

In Brazil, the executive has a power known as “*contingenciamento*” that allows it to reduce discretionary appropriations during the budget execution process on the basis of changes in revenue forecasts, without approval from Congress. The Fiscal Responsibility Law created *contingenciamento* as a means to restrain spending and prevent unexpected deficits in the event that revenue collection falls below estimated amounts.¹⁶ Revenues have persistently been over-estimated, leading to the frequent use of this tool.

¹⁵ IBP, “Open Budget Survey Explorer.”

¹⁶ See Article 9, Fiscal Responsibility Law of 2000, <https://www.iusbrasil.com.br/topicos/11249964/artigo-9-ic-n-101-de-04-de-maio-de-2000>.

The use of *contingenciamento* affects a relatively small and declining percent of the budget, as about 94 percent of the total budget is composed of protected “mandatory expenditures,” pre-defined by law. Nonetheless, discretionary spending is one of the government’s key tools to finance areas like public investments in agriculture and education each year. For that reason, its use can be a major source of contention in Brazil.

According to one study, the executive deliberately over-estimates revenue forecasts to secure legislative support when formulating its budget proposal, knowing it can reduce the budget later during execution.¹⁷ However, once the legislature receives the proposal, it tends to inflate revenues even further, by claiming that the executive’s forecasts are overly conservative. This way, there is fiscal space to add amendments that serve legislators’ constituencies, although their relative impact is small since amendments can only modify discretionary expenditures.¹⁸ On average, during the period between 2010 and 2018, the enacted budget’s total revenue forecast was one percent higher than in the proposed budget, and discretionary expenditure was five percent higher. Additionally, the legislature has tried to protect its amendments from being cut by *contingenciamento*. In June 2019, the lower house approved a constitutional amendment that would require the government to spend a share of the federal budget on projects earmarked by congressional caucuses by treating them as mandatory, rather than discretionary.¹⁹

Comprehensive data on *contingenciamento* is limited, but the Senate Budget Portal (known as SIGA) and external analyses provide some insight on its effects. SIGA reports the amount of funds cut by *contingenciamento* during 2017 to 2019 until the month of October. These reached a cumulative total of R\$ 47 billion, but, given that the full year is not taken into account, the actual amount is likely higher. For example, one article reported that *contingenciamento* reached R\$ 2.4 billion in total in 2018, whereas the budget portal shows R\$ 1.6 billion.²⁰

Research suggests that certain sectors are disproportionately affected by *contingenciamento*. INESC, a civil society organization based in Brazil, found that a third of total cuts were directed to social policies like education, labor, and sanitation during the first half of 2019. Education alone accounted for almost a fifth of total

¹⁷ Carlos Scartascini, Ernesto H. Stein, Emmanuel Abuelafia, *et al*, “Who Decides the Budget? A Political Economy Analysis of the Budget Process in Latin America,” Inter-American Development Bank, January 2009, <https://publications.iadb.org/en/publication/16890/who-decides-budget-political-economy-analysis-budget-process-latin-america>.

¹⁸ In Brazil, the legislature cannot increase total expenditure. However, it has the ability to modify revenues by claiming that the forecasts are inaccurate. Thus, the legislature increases the forecast in order to grow expenditures.

¹⁹ Maria Carolina Marcello, “Brazil’s Congress grants lawmakers greater say on federal budget,” Reuters, June 5, 2019, <https://www.reuters.com/article/us-brazil-politics-budget/brazils-congress-grants-lawmakers-greater-say-on-federal-budget-idUSKCN1T62O9>.

²⁰ Wellton Máximo, “Governo bloqueia R\$ 2,36 bilhões do Orçamento de 2018,” Agência Brasil, November 11, 2018, <http://agenciabrasil.ebc.com.br/economia/noticia/2018-11/governo-bloqueia-r-236-bilhoes-do-orcamento-de-2018>.

contingenciamento, which translates to a five percent reduction in its authorized budget.²¹ The cuts to education have been particularly controversial, prompting mass protests in 2019.²² Similarly, the most recent PEFA report on Brazil from 2009 reported that the Ministries of Urban Development, Education, and Transportation were particularly affected by *contingenciamento* in 2008.²³

Even in Argentina, where we have seen incentives to under-estimate revenue, there are cases where the reverse has been true. When Argentina fell into recession between 1995 and 2001, the government was apprehensive about proposing an unpopular budget with deep spending cuts. As a result, the executive instead decided to exaggerate growth and revenue forecasts to present an optimistic budget. Even though the macroeconomic models of the Secretariat for Economic Policy predicted negative growth, the executive proceeded because it knew it could reduce the budget as necessary by rationing allocations during the year.²⁴

Likewise, there is some evidence that the Philippines has, in the past, deliberately over-estimated revenues to imply exaggerated progress in improving revenue collection. The Department of Finance insisted on using overly optimistic revenue forecasts based on measures to improve tax collection despite the fact the progress was limited. This issue was “known throughout government and cloud[ed] the entire budget process, as it is generally known that in-year adjustments will need to be made in view of actual revenue.”²⁵

These latter cases of over-estimation demonstrate that unrealistic revenue projections are not only about the rules governing executive flexibility during the budget year, but also about the desire by executives to avoid confronting difficult spending decisions when revenue is limited. Under such circumstances, it should fall to oversight actors to raise questions about the degree to which revenue projections are realistic and to encourage more informed debate about trade-offs in the budget. But, of course, this often does not happen effectively.

²¹ Carmela Zigoni, Cleo Manhas, Leila Saraiva and Livi Gerbase, “Contingenciamento: quais setores sofreram cortes de orçamento?” Inesc, July 16, 2019, <https://www.inesc.org.br/contingenciamento-quais-setores-sofreram-cortes-de-orcamento/>.

²² Marina Rossi, “Corte ou contingenciamento, quem está certo na guerra de narrativas da educação?” El País, June 2, 2019, https://brasil.elpais.com/brasil/2019/05/31/politica/1559334689_188552.html.

²³ PEFA, “Brazil: Federal Public Financial Management Performance Based on the PEFA Methodology,” December 2009, <https://pefa.org/sites/default/files/assessments/reports/BR-Dec09-PFMPR-Public.pdf>

²⁴ In Argentina, the budget is executed on a quarterly basis through a quota system overseen by the National Budget Office (ONP). In essence, at the beginning of each quarter, the ONP analyzes revenue collection, expenditure, and physical metrics against targets, and based on this allots funds to spending units for the next three months. This periodic system is designed to ensure that the budget is implemented effectively and to provide flexibility if priorities need to change due to unplanned circumstances, such as a revenue shock or policy reform. However, it also allows the executive to restrain spending by withholding allocations. See Mark Hallerberg, Carlos Scartascini, and Ernesto Stein, *Who Decides the Budget? A Political Economy Analysis of the Budget Process in Latin America*, Inter-American Development Bank, pp. 23-56, <https://bit.ly/2ZHm85M>.

²⁵ Jón R. Blöndal, “Budgeting in the Philippines,” OECD, 2010, <https://www.oecd.org/gov/budgeting/48170279.pdf>.

PERMISSIVE VIREMENT AND RELATED PROCEDURES FOR REALLOCATION OF FUNDS

Aside from deliberate under- or over-estimation of revenues, executives can take advantage of specific permissive rules that allow reallocation of funds during the budget year regardless of revenue targets, and that can affect compositional credibility. All countries have some form of virement, which allows executives a certain degree of limited flexibility while implementing the budget. However, there is wide variation in the extent of such flexibility. And there are a variety of ways to move funds which go beyond standard virement approaches, as discussed below.

Argentina and Mexico both have loose rules for in-year budget modifications. In Argentina, the Financial Administration Law states, “The Chief of the Cabinet of Ministers may make the budget adjustments it considers necessary within the total approved amount,” within certain limitations (i.e. in 2017 they may not exceed 7.5 percent and in 2018 they may not exceed five percent) by decree.²⁶ However, as discussed earlier, DNUs can circumvent the rules. The executive simply needs to report the changes to the legislature within five days of the change.

Interestingly, the legislature has historically played an active role in amplifying the executive’s authority to modify the budget. From 1996 to 2007, the National Congress of Argentina undertook several measures that cumulatively bolstered the budgetary power of the executive to improve efficiency and streamline operations in the public sector. For example, in 2006, Article 37 of the LAF was amended, so that the Chief of the Cabinet of Ministers (JGM) may modify the level of recurrent and capital expenditure and financial applications, when in the past only Congress could do this.²⁷

In Mexico, the LFPRH stipulates, “budget adjustments will be realized as long as they allow for a better achievement of the program objectives.”²⁸ This vague language specifies few limitations on how the budget can be modified. The process is predominantly managed by the Secretariat of Finance and Public Credit (SHCP) and the SHCP does not have to request approval from the legislature for adjustments. The Financial Responsibility Law simply states that if adjustments exceed five percent of the budget, the Secretariat *should* report these changes in

²⁶ Ministerio de Justicia y Derechos Humanos, “Administración Financiera y de los Sistemas de Control del Sector Público Nacional.”

²⁷ Gisell Cogliandro, “Claves para entender el Presupuesto de la Administración Nacional.”

²⁸ Camara de Diputados, Capitulo III: De Las Adecuaciones Presupuestarias, “Ley Federal de Presupuesto y Responsabilidad Hacendaria,” Pages 41-43, December 30, 2015, http://www.diputados.gob.mx/LeyesBiblio/pdf/LFPRH_301215.pdf

the trimester reports. Then, the legislative Commission of Budget and Public Accounts may submit an opinion on them.²⁹

One example of how these permissive rules are utilized in Mexico to enhance executive flexibility during budget implementation is the in-year shifting of funds to Ramo 23: Wage and Economic Provisions, a highly discretionary fund.³⁰ The government itself describes it as “a budget policy instrument that allows the Federal Government to meet obligations that do not correspond to the direct expenditures of its institutions or departments.” Unlike other branches of the budget, Ramo 23, is not regulated by a particular law, so there are no criteria for how its funds are supposed to be utilized. Usually, this budget finances transfers to subnational entities, but this is not always the case. The Supreme Audit Institution of Mexico (ASF) has described this branch as lacking transparency and raised instances where it did not fulfill its proposed objective.³¹

During 2013 to 2018, Ramo 23 spent 83 percent more than its approved budget, on average. This meant that its share of the total expenditure rose from 2.8 percent in the approved budget to 4.8 percent in the executed budget.

²⁹ The IBP, “Explaining Budget Deviation – Mexico: Spending on Social Development and Agriculture,” April 2019, <https://www.internationalbudget.org/wp-content/uploads/mexico-budget-credibility-snapshot-ibp-2019.pdf>.

³⁰ In Mexico, the budget is distributed through *ramos administrativos* (administrative branches). Each Secretariat and autonomous institution has a respective stream through which it receives funding, such as Branch 12 for Health and Branch 1 for the legislature. However, there are also “general branches” that can be used for distinct purposes, such as Branch 28 and 33 that transfer funds to subnational governments. Wage and Economic Provisions is a general branch. See Ministry of Finance and Public Credit, “Proyecto de Presupuesto De Egresos de La Federación 2018 Estrategia Programática (Resumen): 23 Provisiones Salariales y Económicas,” 2018, https://www.ppef.hacienda.gob.mx/work/models/PPEF2018/docs/23/r23_epr.pdf.

³¹ Fundar.

TABLE 3: APPROVED AND EXECUTED BUDGET FOR RAMO 23: WAGE AND ECONOMIC PROVISIONS AS A PERCENT SHARE OF TOTAL EXPENDITURE

	Share of approved budget	Share of executed budget
2014	2.8%	3.2%
2015	2.7%	4.2%
2016	3.0%	4.6%
2017	2.7%	7.4%
2018	3.0%	4.7%
Average	2.8%	4.8%

Source: Public Accounts

In Serbia, executives have the ability to deem certain allocations as “unusable” and then shift them to other areas of the budget, without consulting the legislature or providing a clear justification. The government has a contingency fund known as the “current budget reserve” that is set aside for cases where the original budget for various items is deemed insufficient, or to supplement municipalities that experience revenue shortfalls. In recent years, the government has allocated a small amount of money into the contingency fund when enacting the original budget, but then significantly boosted this original figure by transferring into it funds that “cannot be used” from various programs.

For example, in 2017, the budget allocated RSD 2 billion for the contingency fund, but, over the course of the year, an additional RSD 46.3 billion was transferred into the fund (see Table 5). This problem has worsened between 2014 to 2017, such that the change in the amount added to the fund and the absolute amount deposited has increased each year.

TABLE 4: BUDGET FOR CURRENT RESERVE FUND, 2014-2017, IN BILLION RSD

	2014	2015	2016	2017
Approved by Parliament	1.1	1.2	1.1	2.0
In-year transfers to the fund	2.9	28.4	37.8	44.3
Total: approved budget + in-year transfers	4.0	29.6	38.9	46.3

Although Serbia has other virement procedures, they don't offer nearly as much discretion as the current budget reserve. It is generally unclear how a determination is made that appropriated funds "cannot be used", or on where those funds will be redirected. Government reports provide no justifications for how transfers are made into and out of the current budget reserve.

In 2018, Transparency Serbia, a civil society organization, submitted information requests to various government institutions that either contributed to or benefited from the fund in order to better understand how the fund operates. However, most of their requests were ignored, and the institutions that did respond usually explained what the funds were used for, rather than why they were moved or why they were needed in the first place (i.e., what caused the municipal revenue shortfalls). One municipality even replied that this information was not of public interest and refused to explain how the funds were used.

Transparency Serbia also submitted a formal inquiry to the Parliamentary Committee for Budget and Public Finances to learn whether the body performs any oversight around the current budget reserve. The chair of the committee replied that it currently does not because such oversight is not specifically required in the Rules of Procedure, although she acknowledged that it would be possible to investigate the fund if Members of Parliament desired.³²

There are some limitations on the use of the current reserve fund. By law, the maximum amount that may be allocated to the fund is four percent of total revenues.³³ Nonetheless, this represents billions of dollars. Further, in 2019, the government increased the amount that can be transferred into the fund and relaxed the conditions under which a municipality can qualify for receipt of money. While it is too early to judge the impact of this reform, there is concern that the fund may become even more opaque.

A similar practice has been found in the Philippines in the past. By law, "any savings in the regular appropriations... may, with the approval of the President, be used to cover a deficit in any other item of the regular appropriations."³⁴ One way in which the executive has been able to generate savings is through unreleased appropriations. For instance, the Department of Budget and Management (DBM) and OECD indicated that the

³² The IBP, "Explaining Budget Deviation – Serbia: Contingency Fund," April 2019, <https://www.internationalbudget.org/wp-content/uploads/serbia-budget-credibility-snapshot-ibp-2019.pdf>.

³³ Prior to 2015, the limit was two percent of revenues.

³⁴ Executive Order No. 292, Book VI, Chapter 5, Section 39: "...any savings in the regular appropriations authorized in the General Appropriations Act for programs and projects of any department, office or agency, may, with the approval of the President, be used to cover a deficit in any other item of the regular appropriations." This is indicated in Article VI, Section 25 (6) of the Constitution. Official Gazette, "Executive Order No. 292 [BOOK VI/Chapter 5-Budget Execution]" Government of Philippines, <http://www.officialgazette.gov.ph/1987/07/25/executive-order-no-292-book-vichapter-5-budget-execution/>.

administration of Former President Arroyo frequently withheld the release of appropriations to force savings, such as during the fiscal crisis of 2004 when it wanted to contain deficits.³⁵

The most controversial example of this came from the Disbursement Acceleration Program (DAP) during 2011 to 2013. In 2011, disbursements were very low, so Former President Benigno Aquino created the DAP to quicken budget execution by treating unreleased appropriations as savings and using these funds to increase expenditure for “high impact and priority programs and projects.” This drew heavy criticism and ultimately the Supreme Court ruled in 2015 that the declaration of unutilized appropriations as savings was unconstitutional.³⁶ As a result, the government narrowed the definition of savings beginning with the 2015 budget by specifying that savings cannot originate from unutilized appropriations caused by the fault or negligence of an agency. This decision restrained the arbitrary creation of savings.³⁷

It is worth acknowledging that *contingenciamento* in Brazil is comparable to the Serbia and Philippines examples because the executive may arbitrarily reduce certain appropriations. Of course, this is only permissible when revenues are lower than expected.

LIMITED OVERSIGHT OF SUPPLEMENTARY BUDGETS

Generally, if a government wants to spend money that has not been appropriated or wants to spend it on a different item than the originally appropriation, the legislature must enact a supplementary budget. However, in some countries like Uganda and Kenya, the executive may undertake a supplementary budget without the ex-ante approval of the legislature. Although the legislature must provide retroactive approval, this provides considerable flexibility to executives to change the budget. In some cases, restrictions on the nature and size of these supplementary budgets are also not followed, leaving executives with more discretion in practice than on paper.

In Uganda, the Ministry of Finance, Planning, and Economic Development (MoFPED) may approve supplementary expenditure up to three percent of the total approved budget, with retroactive parliamentary approval. Any amount exceeding three percent should have ex ante parliamentary approval.³⁸ However, the executive has frequently exceeded these limitations without consulting Parliament.

³⁵ Jón R. Blöndal, “Budgeting in the Philippines,” 2010, <https://www.oecd.org/gov/budgeting/48170279.pdf> and Department of Management and Budget, “Fast and Efficient Budget Execution: How Spending is Sped up to Deliver Results,” 2016, <https://bit.ly/304bE0E>.

³⁶ Department of Budget and Management, “The Aftermath of the DAP,” 2016, <https://www.dbm.gov.ph/wp-content/uploads/Executive%20Summary/2016/C1a.%20Aftermath%20of%20DAP%20updated.pdf>.

³⁷ Department of Budget and Management, “Budget Integrity and Accountability: How the Government Strengthened the Ecosystem of Accountability in PFM.”

³⁸ Ministry of Finance, Planning and Economic Development, “The Public Financial Management Act, 2015.” Government of Uganda, March 6, 2015, <https://bit.ly/2zvmsQ8>.

From 2001 to 2016, 12 of the 15 supplementary budgets exceeded the 3 percent limit and were implemented without prior parliamentary approval, according to the 2017 IMF Fiscal Transparency Evaluation. Overall, supplementary budgets averaged 6.4 percent of the approved budget during this period.³⁹ The Auditor General has surfaced cases in which expenditure was made without following the proper procedure as well. Its most recent report in 2016, for example, stated that the Uganda High Commission in Kigali spent UGX 2.8 billion over budget before receiving supplementary approval.⁴⁰

The executive is required to present a supplementary estimate within four months after the money is spent, but the latest PEFA report highlighted an instance in which Parliament considered the supplementary budgets 9 months after the end of the fiscal year in which they were used. Further, the Budget Committee's report on the supplementary appropriations expressed several disagreements with the emergency nature and justification for additional expenditure.⁴¹

The executive's tendency to use supplementary budgets, as well as its flexibility to reallocate funds, contributes to Uganda's poor compositional credibility, as seen in Table 6.⁴²

³⁹ International Monetary Fund, "Uganda: Fiscal Transparency Evaluation," May 25, 2017, <https://www.imf.org/en/Publications/CR/Issues/2017/05/25/Uganda-Fiscal-Transparency-Evaluation-44935>.

⁴⁰ Office of the Auditor General, "Annual Report of The Auditor General On The Financial Statements of GoU for the Financial Year Ended 30th June 2016," P. 314, 2016, <https://bit.ly/2ZF8nnF>.

⁴¹ Ministry of Finance, Planning and Economic Development, "The Public Finance Regulations, 2016," June 17, 2016, <https://bit.ly/2HzQHU9>, and PEFA, "Uganda Public Financial Expenditure and Financial Accountability (PEFA) Assessment 2016," December 30, 2017, <https://pefa.org/sites/default/files/UG-Dec17-PFMPR-Public%20with%20PEFA%20Check.pdf>.

⁴² The MoFPED may reallocate funds from one budget item or activity to another within 10 percent of the approved allocation.

TABLE 5: PERCENT DEVIATION BETWEEN EXECUTED AND APPROVED BUDGET, BY SECTOR, 2012/13 TO 2016/17

	2012/13	2013/14	2014/15	2015/16	2016/17
Agriculture	-11%	9%	10%	-3%	-2%
Lands, Housing and Urban Development	-4%	1%	58%	-11%	22%
Energy and Mineral Development	-91%	-86%	-48%	14%	-9%
Works and Transport	6%	-4%	-2%	-11%	3%
Information and Communication Technology	-14%	-6%	-6%	-14%	-9%
Tourism, Trade and Industry	-1%	4%	7%	-11%	-11%
Education	-5%	-2%	-5%	0%	-3%
Health	-2%	-6%	-5%	0%	-1%
Water and Environment	-2%	-3%	-9%	-7%	-10%
Social Development	-8%	-5%	2%	-18%	-36%
Security	7%	-3%	19%	25%	8%
Justice, Law and Order	8%	33%	8%	9%	1%
Public Sector Management	-10%	1%	-4%	2%	26%
Accountability	-4%	3%	-36%	-7%	8%
Legislature	-2%	-1%	-4%	12%	8%
Public Administration	54%	-10%	-16%	19%	11%
Grand total	-13%	-11%	-10%	2%	3%

Note: Table reflects expenditure financed by domestic funds and excludes interest payments. Green indicates a 0 to 5 percent budget deviation (either positive or negative), yellow indicates a 6 to 15 percent budget deviations, and red indicates a budget deviation over 15 percent.

Source: Ministry of Finance, Planning and Economic Development

It is worth noting that there may be systematic patterns in how the budget is shifted in Uganda during implementation. According to the Table 6, the Security and Justice, Law, and Order sectors have been over-spent in at least four of the five years. Meanwhile, the Education, Health, and Energy sectors have been under-spent persistently. The IMF similarly reported that between 1997/98 and 2013/14, budget reallocations tended to flow from social and economic sectors to public administration, security, and justice sectors.⁴³

⁴³ International Monetary Fund.

The MoFPED has acknowledged these deviations in its reports, including the Annual Monitoring Report. For example, in 2016/17, it pointed out that the approved budgets for 91% of the 10 priority sectors were revised, which indicated poor planning and budgeting. It also remarked that the fact that all 10 sectors registered budget cuts reflected poor budget predictability.⁴⁴ Further, the Ministry tends to provide a brief reason for why expenditure was increased but does not specify how the supplementary was financed. Given that Uganda has a cash budgeting system, such that funds are released as cash is made available, it may pay for supplementary budgets by withholding appropriations from other areas of the budget.⁴⁵ The widespread use and lack of transparency of supplementary budgets has also been criticized by the public.⁴⁶

Kenya faces a similar challenge with supplementary budgets. Article 223 of the Constitution provides that “approval of Parliament... shall be sought within two months after the first withdrawal of the money,” and limits supplementary expenditure to 10 percent of the total budget.⁴⁷ This permits the executive to increase expenditure without informing or seeking the approval of the legislature beforehand, though this may not always happen in practice.

However, there is evidence from past supplementary budgets that the executive may increase expenditure prior to consulting Parliament. During the 2018-19 fiscal year, the government submitted two supplementary budgets, one of which was worth KSh 82 billion, or about 3.2 percent of the enacted budget, and was approved just 12 days before the end of the fiscal year. Similarly, during the 2016/17 fiscal year, a supplementary budget totaling KSh 32 billion, or 1.3 percent of the enacted budget, was approved nine days before the end of the year. While it cannot be verified with the available information, it is unlikely that the government actually spent this entire sum during the remainder of the fiscal year. Instead, the government may have spent much or all of it prior to enactment. Further, it is worth noting that the other supplementary approved in 2018/19 had retroactively commenced a month before it was actually passed.⁴⁸

⁴⁴ Ministry of Finance, Planning, and Economic Development, “Annual Budget Monitoring Report Financial Year 2016/2017,” Government of Uganda, p. 33,

<https://www.finance.go.ug/sites/default/files/Publications/Annual%20Monitoring%20Report%20FY2016-17.pdf>.

⁴⁵ Budget Advocacy Group, “Budget indiscipline is killing our economy. No Budget!” March 2 2018, <http://csbag.org/wp-content/uploads/2018/03/Press-Statement-Budget-Indiscipline-is-killing-our-economy-1.pdf>.

⁴⁶ The Civil Society Budget Advocacy Group, a coalition of civil society organizations, called on the government to tighten rules around supplementary budgets. See The Independent, “CSOs ask Uganda parliament to reject supplementary budgets,” March 5, 2018, <https://www.independent.co.ug/csos-ask-uganda-parliament-reject-supplementary-budgets/>, and Civil Society Budget Advocacy Group.

⁴⁷ Constitute Project, “Kenya’s Constitution of 2010,” August 12, 2019, https://www.constituteproject.org/constitution/Kenya_2010.pdf?lang=en.

⁴⁸ See kenyalaw.org for supplementary appropriations enacted during 2014 to 2019.

CONCLUSION

This paper highlights certain rules and practices that can exacerbate low budget credibility, including gaming of revenue forecasts and exploiting discretion to modify the approved budget during the year. Although the topics discussed here are not comprehensive, they surface important vulnerabilities that can be found across a variety of countries. These rules and practices can undermine the budget's reliability and the role of wider stakeholder consultation in the process of approving the budget in the first place.

This flexibility may offer advantages at time, particularly in terms of efficiency. In Argentina, the reason the legislature has augmented the executive's power to modify the budget was to heighten the government's ability to respond to urgent changes in needs or priorities. However, too much flexibility can come at the cost of accountability and transparency.

In some cases, it may be reasonable to curb the flexibility of executives to modify the budget by tightening the rules or adding checks to the process. The Philippines is suggestive of how this can be effective; the judiciary's narrowing of the definition of savings restrained the executive's ability to arbitrarily shift allocations during the year. A similar logic could be applied in countries like Serbia by limiting the executive's discretion to transfer allocations from one program into the contingency fund or requiring it to consult the legislature for significant transfers. Likewise, in Mexico, the LFPRH could be amended to specify further how excess revenue ought to be distributed.

However, adding rigidity to the budget implementation process also carries risks if it limits the ability of governments to be responsive. Furthermore, even when formal rules exist, they are not always followed, as is the case in Uganda. Thus, while tightening the rules may help, it is equally, if not arguably more critical for citizens and oversight institutions to exercise greater vigilance and foster debate about the reasons for budget deviations. This will allow needed flexibility, while also making it easier to hold executives accountable to existing rules and agreed priorities except in cases where it is necessary to adjust them.

This engagement is not possible, though, unless governments publish information on budget implementation, including justifications for why deviations from budget happen. According to the OBS 2017, only 27 percent of countries surveyed published an in-year, mid-year, and year-end report, which describe the budget's implementation. Similarly, our joint study with civil society organizations in 23 countries revealed that governments tend to provide inadequate reasons for why the budget is not fully implemented. Even the most transparent form of budget revision, the supplementary budget, generally includes little published justification for proposed changes.

Robust debate about budgets and budget deviations require more than transparency, of course. They also require a degree of civic space and democratic practice more broadly, in which governments and citizens develop norms of engagement around public policy. This is the essence of the increasingly urgent agenda of public participation in policy and budget decisions, an agenda IBP has taken up in various ways in recent years.⁴⁹ Nonetheless, even as citizens and other stakeholders try to address the overall environment for engagement, there are specific smaller steps that can be taken to tighten budget rules and establish norms on justifications, while we continue to build oversight institutions and empower civil society and the media to engage the budget.

⁴⁹ International Budget Partnership, Open Budget Survey 2017, January 2018, <https://www.internationalbudget.org/wp-content/uploads/open-budget-survey-2017-report-english.pdf>. For more, visit our blog: <https://www.internationalbudget.org/category/citizen-participation/>.